

OWYHEE CALCIUM PRODUCTS, INC.

IBLA 82-545

Decided April 26, 1983

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting mineral patent applications, I-14960 and I-14961.

Affirmed.

1. Mining Claims: Location--Mining Claims: Placer Claims

All placer mining claims must conform as nearly as practicable with the public survey system. 43 CFR 3842.1-2.

2. Mining Claims: Lands Subject to--Mining Claims: Placer Claims

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 43 CFR 3842.1-2.

3. Applications and Entries: Generally--Mining Claims: Patent

A mineral patent applicant must support his application with a certificate or abstract of title. 43 CFR 3862.1-3(a).

4. Application and Entries: Generally--Mining Claims: Patent

Where an applicant for a mineral patent has been requested to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the application without prejudice to applicant's right to submit a proper and complete application in the future.

APPEARANCES: Barry Marcus, Esq., Boise, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Owyhee Calcium Products, Inc., has appealed the January 26, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which rejected mineral patent applications I-14960, for Oolite Nos. 1, 2, 3, and 4 mining claims, and I-14961, for Oolite Nos. 5, 6, and 7 mining claims and the Oolite millsite. The applications were filed November 15, 1978, by appellant.

The original notices of location for the mining claims, as included in the patent applications, were recorded February 21, 1966, with the Owyhee County clerk. Each of the seven mining claim locations were for 160 acres. ^{1/} The locator was designated as "OWYHEE LIME COMPANY, a partnership" and the notices were signed "OWYHEE LIME COMPANY, a partnership, by H. L. Melton."

No other names of individual locators were listed on the location notices. The patent applications included a document titled Authorization to Convey Partnership Property and the expressed intended conveyance was to Owyhee Calcium Products, Inc. The partners of the Owyhee Lime Company were listed therein as H. L. Melton Sr., Ruby D. Melton, H. L. Melton, Jr., Mary Melton, John Forbis, Hazel Forbis, Lorene Golling, Homer Brown, and Mabel Brown (9 individuals). The signatures of all those listed as partners appear on this instrument, which is dated November or December 1971. Owyhee Calcium Products was not incorporated until January 1973. No other reference or evidence of a conveyance to appellant appears among the documents submitted with the applications. Respective Certificates of Title on Mining Claims, dated November 1, 1978, were included in the applications, declaring Owyhee Calcium Products as the possessor of title to the subject mining claims and millsite. H. L. Melton, the agent and partner acting for the partnership in the location of the mining claims, appears in documents as a director and a vice president of the corporation.

On April 23, 1979, BLM issued a decision requiring additional information before further review of the patent application could occur. The following items were requested: (1) proof of posting; (2) statement of improvements; (3) evidence of title; (4) agreement of publisher; (5) proof of no known value; (6) proof of nonmineral character; (7) correction of the descriptions of the Oolite No. 7 claim and the Oolite millsite, which were misdescribed in the application. Appellant submitted various documents in

^{1/} Although all the mining claims were originally located for 160 acres each, the mineral patent applications for Oolite Nos. 2, 3, 4, 6, and 7 are for 160 acres and the applications for Oolite Nos. 1 and 5 are for 158.04 and 120 acres, respectively.

response, and the applications were forwarded by BLM to the Regional Solicitor's Office for title opinions. Because of issues relating to the right of a partnership to locate association placer claims, particularly where the notices of location were signed by a single partner as agent, it was recommended that the partnership locations be reviewed and, possibly, that amended notices of location be filed. On January 13, 1981, BLM issued a decision requesting (1) amended location notices showing descriptions by legal subdivision rather than by metes and bounds; (2) an abstract of title reflecting the interests of all locators and their successors of interest. A period of 90 days was afforded the applicant in which to submit the requested items. The decision provided that failure to do so would result in rejection of the applications. The period to submit the requested items was extended upon appellant's request to July 15, 1981, and, subsequently, to January 15, 1982. On January 15, 1982, appellant submitted amended location notices, amended claim of millsite, and quitclaim deeds. In its decision dated January 26, 1982, BLM held that these documents were inadequate to cure the prior deficiencies because they were not signed by all interested parties and were not recorded or certified. BLM rejected both applications, and Owyhee Calcium Products, Inc. filed its timely appeal to this Board.

On July 21, 1982, appellant filed with BLM copies of amended notices of location which had been recorded with Owyhee County clerk on June 16, 1982. The amended notices listed the locators as: H. L. Melton, Sr., Ruby D. Melton, H. L. Melton, Jr., Mary Melton, Randy Melton, Vicky Melton, Mabel Brown, and Homer Brown. The notices were signed by H. L. Melton, Jr., acting as agent for the locators "[w]hich individuals are a mining partnership under Idaho Law." These notices, however, improperly described the lands within the placer claims by metes and bounds. On September 13, 1982, appellant again filed amended notices of location. These notices were recorded on August 23, 1982, with the county clerk, and properly described the lands within the claims according to the survey system. However, the list of locators reads: H. L. Melton, Sr., Ruby D. Melton, Vicky Melton, H. L. Melton, Jr., Mary Melton, John Forbis, Hazel Forbis, Lorene Golling, Randy Melton, Homer Brown, Mable Brown -- Association for Owyhee Lime Company, a partnership. The notices were signed by only five persons: Harry L. Melton, Ruby D. Melton, H. L. Melton, Jr., Randy Melton, Vicky Melton. Recorded quitclaims deeds of the mining claims to appellant were filed with BLM on September 13, 1982, for "H. L. Melton, Sr., Ruby D. Melton, H. L. Melton, Jr., Vicky Melton, Randy Melton -- Association for Owyhee Lime Company, a partnership."

Appellant also provided documents concerning the failure of Mabel Brown, Homer Brown, and Mary Melton to contribute their portion of the required assessment work and improvements. See 43 CFR 3851.4; 30 U.S.C. § 28 (1976). The 180-day publication period for Homer and Mabel Brown normally would have expired January 12, 1982, although it may have been extended beyond that date pursuant to the rule expressed in Knickerbocker v. Halla, 177 F. 172 (9th Cir. 1910). The 90-day notice period for Mary Melton normally would have expired September 30, 1981. It appears, therefore, that the other co-locators have succeeded to the interests of the three delinquent claimants, but not, however, before the five contributing claimants quitclaimed to the corporation on December 23, 1981, *i.e.*, before the interests of Homer and Mabel Brown were extinguished.

The millsite was conveyed by quitclaim deed to Owyhee Calcium Products from H. L. Melton, Jr., on April 9, 1981. The deed was recorded on August 23, 1982. The notice of claim for a millsite was recorded by Harry Melton on July 27, 1973.

In its statement of reasons, filed February 17, 1982, appellant requests reinstatement of the applications, stating:

This appeal is taken for the reason that said decision is arbitrary, capricious, and unsupported by the facts or law and was entered prematurely without notice or process. The deficiencies claimed were not of substance or have been corrected by filing with the Bureau of Land Management or could be corrected by minor supplemental filings. It is arbitrary and contrary to law for the BLM to reject said application for an alleged failure to submit documents not previously requested.

[1] The initial issue on review of BLM's decision concerns whether the request for appellant to file amended notices of location was proper. The notices of location for the subject placer mining claims described the lands by metes and bounds. The applicable regulation, 43 CFR 3842.1-2, declares that placer mining claims must conform as nearly as practicable to the public survey system. See 30 U.S.C. § 35 (1976). The patent applications, contrary to the descriptions in the notices, describe the lands according to the survey. BLM properly requested appellant to submit amended notices conforming to this Departmental regulation. The second amended notices of location corrected that deficiency.

[2] In its decision to require amended notices, BLM declared, "The location notices are signed by only one person for a partnership, which allows a 20-acre filing," and "[t]here is no documentation at time of location that an association of eight persons existed to cover the 160 acres of each claim." The law clearly provides that no placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2. Within the meaning of 30 U.S.C. § 35 (1976) it has been determined that a corporation is an "individual claimant," and therefore may not locate placer claims of more than 20 acres each. United States v. Toole, 224 F. Supp. 440, 456 (D. Mont. 1963); Igo Bridge Extension Placer, 38 L.D. 281 (1909). BLM likens the partnership unto a corporation in that the partnership is considered a single business entity representative of the partners. However, the concept that a partnership is a separate and single entity is not an established rule and is an often debated issue. 68 C.J.S. Partnership § 67 (1950). Furthermore, the representative nature of a partnership may change with the circumstances where it is used.

In the first amended notices of location, the locators assert themselves to be a "mining partnership under Idaho law." In some states, such as Idaho, mining partnerships are recognized. Idaho Code Ann. §§ 53-401 to 53-412 (1979). A mining partnership arises when two or more persons own or acquire

a mineral interest or a right to work it, and actually engage in the joint operation of the enterprise. 3 Lindley on Mines § 796 (1914). Mining partnerships have rules peculiar to themselves. Kimberly v. Arms, 129 U.S. 512, 530 (1889). When filing the location notices, H. L. Melton acted as an agent for the partnership. Legal title to and possession of the mining property can be held by one, and need not be placed in the names of all partners. 3 Lindley on Mines § 802. Under Departmental regulations, 43 CFR 3401.2 (1966) (now 43 CFR 3832.1), agents may make locations for qualified locators. There is no provision prohibiting the location of a mining claim or the doing of any acts required to complete the appropriation by an agent, and the fact that the locator acted by an agent in such matters does not invalidate the location. 58 C.J.S. Mines and Minerals §§ 29(a) and (b) (1948).

Eight associated persons, each qualified to make location, however, are absolutely essential to the initiation and completion of a location for 160 acres. Furthermore, a valid association location cannot be made by the use of "dummy locators" acting on behalf of others. See Big Horn Limestone, 46 IBLA 98 (1980); Big Horn Calcium, 44 IBLA 289 (1979); McKittrick Oil Co., 44 L.D. 340 (1915). There is nothing in the record to verify that there were indeed eight locators of the original claims and that there were not less than eight claimants who held and worked the claims for a period of time equal to the statute of limitation in Idaho law required to establish rights in a 160-acre claim under 30 U.S.C. § 38 (1976), in the event appellant pursues patents for the subject land under that alternate approach. See United States v. Haskins, 59 IBLA 1 (1981). As previously noted, the original location notices were in the name of "Owyhee Limestone Company, a partnership," by H. L. Melton, without naming any other co-locators. The list of partners involved has changed with almost every subsequent document submitted in furtherance of the applications. At the time of BLM's decision dated January 26, 1982, it was uncertain as to which parties were actively involved in the location and how appellant acquired their respective interests.

[3] There is no statutory limitation to the number of placer claims that may be located, but each such location must possess a discovery of a valuable mineral deposit in order to be a valid location. Big Horn Limestone, *supra*. Where an association placer mining claim for more than 20 acres passes into the sole control of one locator prior to discovery, the location, upon later discovery, is valid for only 20 acres. Brattain Contractors, 37 IBLA 233 (1978). Appellant's asserted right to receive patents for the subject mining claims must be based upon the location and discovery of each of the respective claims by an association of eight claimants. The submission of an abstract of title assists in ascertaining whether title passed before or after the time when discovery was made. Also, in this situation, it would be improper for appellant to assert the right to apply for a patent until its interest in the claims is fully vested. John R. Meadows, 43 IBLA 35, 39 (1979). Under 43 CFR 3862.1-3(a), a mineral patent applicant must support its application with a certificate or abstract of title. BLM correctly requested an abstract of title which would assist in reviewing the clouded circumstances concerning the validity of the locations and the propriety of the applications.

Since BLM's decision to reject the applications for lack of documents complying with the regulations, appellant has submitted documents in an effort

to remedy the expressed deficiencies. The amended notices of location were recorded by the county clerk, but only five persons signed as locators. Quit-claim deeds to appellant were recorded, but again, only five persons signed. 2/ As noted, eight persons are essential for locating a placer mining claim of 160 acres. These documents do not establish that there were eight qualified locators. 3/

Owyhee Calcium Products, Inc. submitted the applications for patent in 1978; at which time they were premature. The documents show that the date of transfer to appellant by five persons of their respective interests in the subject claims was December 23, 1981. The records also reflect that two alleged locators still possessed interests in the claims after those conveyances.

Thus, appellant's applications, even supplemented by later filings, do not establish the sequence of (1) valid location by eight qualified persons, (2) discovery while still held by an eight-locator association, and (3) transfer of all interests in the mining claims to appellant.

[4] The regulations governing mineral patent applications are set forth in 43 CFR Part 3860. Essentially, the application must be filed in duplicate, stating that the applicant is a citizen of the United States, and has possessory right to the claims which must be described fully as to the character of the land, mineral, deposits, water courses, and vegetation, including timber. There must be a statement as to the work performed on the claims, and as to value of the improvements made thereon, as well as a statement as to the amount and type of minerals extracted and disposed of. The statements must be corroborated by two disinterested witnesses. There must be furnished a certificate or abstract of title brought down to include the date of filing of the application, accompanied by a certified copy of the original location notices, and any amendments thereof.

In order to determine appellant's qualifications, BLM was entitled to require it to furnish information concerning such qualifications. Donald L. Clark, 64 IBLA 129 (1982); Wilbur G. Hallauer, 52 IBLA 202 (1981). See also Judith Gail Bell, 57 IBLA 139 (1981), and cases cited therein. As an applicant is the proponent of its application, the obligation is upon it to establish such facts as will show compliance with the law, failing which its application will not be granted. It would be absurd to assume that BLM may

2/ The omitted signatures are those of the claimants who were "advertised out" under the procedure prescribed in 30 U.S.C. § 28 (1976). However, the names of three other claimants (John Forbis, Hazel Forbis, and Lorene Golling), listed as partners in Owyhee Limestone Co., do not appear in any conveyances, nor were their interests vitiated pursuant to the statute, *supra*.

3/ Some amended location notices list eleven co-locators. Interestingly, one list of partners in Owyhee Limestone Company names nine individuals. If that be so, and assuming that the locations of association placers could legitimately be accomplished in the name of the partnership alone, then the interests of all nine partners would have to be accounted for. But where there are eleven co-locators listed, appellant must show its acquisition of all eleven interests.

issue a patent without proof of the applicant's compliance with the relevant statutes and regulations. BLM did not act arbitrarily or capriciously in its decision to reject these applications for mineral patent. See Wilbur G. Hallauer, supra. BLM's request for information specified the time period within which appellant was required to respond and informed it of the consequences in failing to respond. Nothing was requested of appellant that was not required by Departmental regulations. We affirm the decision without prejudice to new applications which conform to all of the regulatory requirements, set forth in 43 CFR Part 3860.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.

